

SENATE, No. 2304

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 19, 2020

Sponsored by:

Senator STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)
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District 33 (Hudson)
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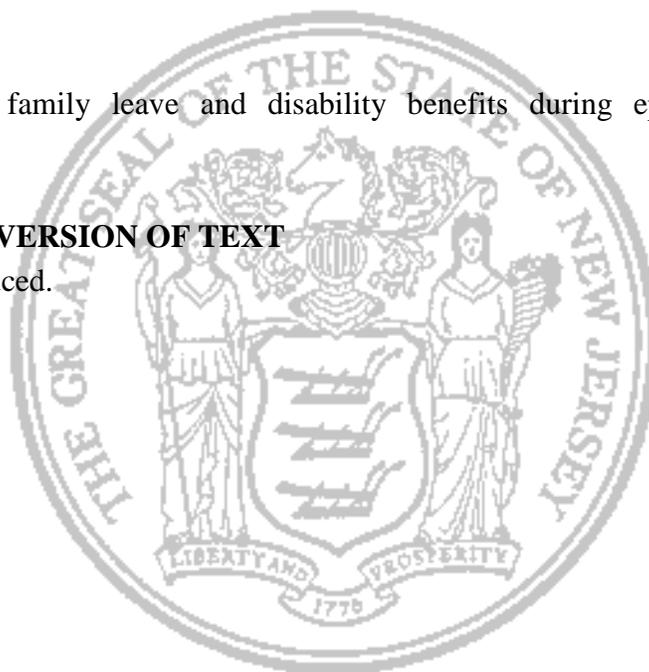
Senators Ruiz, Brown, Assemblywoman Jasey, Assemblymen Verrelli, Zwicker, Assemblywoman Downey, Assemblyman Benson and Assemblywoman McKnight

SYNOPSIS

Concerns family leave and disability benefits during epidemic-related emergencies.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/25/2020)

1 AN ACT concerning family leave and disability benefits and
2 amending various parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 3 of P.L.2018, c.10 (C.34:11D-3) is amended to read
8 as follows:

9 3. a. An employer shall permit an employee to use the earned
10 sick leave accrued pursuant to this act for any of the following:

11 (1) time needed for diagnosis, care, or treatment of, or recovery
12 from, an employee's mental or physical illness, injury or other
13 adverse health condition, or for preventive medical care for the
14 employee;

15 (2) time needed for the employee to aid or care for a family
16 member of the employee during diagnosis, care, or treatment of, or
17 recovery from, the family member's mental or physical illness,
18 injury or other adverse health condition, or during preventive
19 medical care for the family member;

20 (3) absence necessary due to circumstances resulting from the
21 employee, or a family member of the employee, being a victim of
22 domestic or sexual violence, if the leave is to allow the employee to
23 obtain for the employee or the family member: medical attention
24 needed to recover from physical or psychological injury or
25 disability caused by domestic or sexual violence; services from a
26 designated domestic violence agency or other victim services
27 organization; psychological or other counseling; relocation; or legal
28 services, including obtaining a restraining order or preparing for, or
29 participating in, any civil or criminal legal proceeding related to the
30 domestic or sexual violence;

31 (4) time during which the employee is not able to work because
32 of:

33 (a) a closure of the employee's workplace, or the school or place
34 of care of a child of the employee by order of a public official or
35 because of a state of emergency declared by the Governor, due to an
36 epidemic or other public health emergency **[**, or because of**]**;

37 (b) the declaration of a state of emergency by the Governor, or
38 the issuance by a health care provider or the Commissioner of
39 Health or other public health authority of a determination that the
40 presence in the community of the employee, or a member of the
41 employee's family in need of care by the employee, would
42 jeopardize the health of others; **[or]**

43 (c) during a state of emergency declared by the Governor, or
44 upon the recommendation, direction, or order of a healthcare
45 provider or the Commissioner of Health or other authorized public

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 official, the employee undergoes isolation or quarantine, or cares
2 for a family member in quarantine, as a result of suspected exposure
3 to a communicable disease and a finding by the provider or
4 authority that the presence in the community of the employee or
5 family member would jeopardize the health of others; or

6 (5) time needed by the employee in connection with a child of
7 the employee to attend a school-related conference, meeting,
8 function or other event requested or required by a school
9 administrator, teacher, or other professional staff member
10 responsible for the child's education, or to attend a meeting
11 regarding care provided to the child in connection with the child's
12 health conditions or disability.

13 b. If an employee's need to use earned sick leave is foreseeable,
14 an employer may require advance notice, not to exceed seven
15 calendar days prior to the date the leave is to begin, of the intention
16 to use the leave and its expected duration, and shall make a
17 reasonable effort to schedule the use of earned sick leave in a
18 manner that does not unduly disrupt the operations of the employer.
19 If the reason for the leave is not foreseeable, an employer may
20 require an employee to give notice of the intention as soon as
21 practicable, if the employer has notified the employee of this
22 requirement. Employers may prohibit employees from using
23 foreseeable earned sick leave on certain dates, and require
24 reasonable documentation if sick leave that is not foreseeable is
25 used during those dates. For earned sick leave of three or more
26 consecutive days, an employer may require reasonable
27 documentation that the leave is being taken for the purpose
28 permitted under subsection a. of this section. If the leave is
29 permitted under paragraph (1) or (2) of subsection a. of this section,
30 documentation signed by a health care professional who is treating
31 the employee or the family member of the employee indicating the
32 need for the leave and, if possible, number of days of leave, shall be
33 considered reasonable documentation. If the leave is permitted
34 under paragraph (3) of subsection a. of this section because of
35 domestic or sexual violence, any of the following shall be
36 considered reasonable documentation of the domestic or sexual
37 violence: medical documentation; a law enforcement agency record
38 or report; a court order; documentation that the perpetrator of the
39 domestic or sexual violence has been convicted of a domestic or
40 sexual violence offense; certification from a certified Domestic
41 Violence Specialist or a representative of a designated domestic
42 violence agency or other victim services organization; or other
43 documentation or certification provided by a social worker,
44 counselor, member of the clergy, shelter worker, health care
45 professional, attorney, or other professional who has assisted the
46 employee or family member in dealing with the domestic or sexual
47 violence. If the leave is permitted under paragraph (4) of
48 subsection a. of this section, a copy of the order of the public

1 official or the determination by the health authority shall be
2 considered reasonable documentation.

3 c. Nothing in this act shall be deemed to require an employer to
4 provide earned sick leave for an employee's leave for purposes
5 other than those identified in this section, or prohibit the employer
6 from taking disciplinary action against an employee who uses
7 earned sick leave for purposes other than those identified in this
8 section. An employer may provide an offer to an employee for a
9 payment of unused earned sick leave in the final month of the
10 employer's benefit year. The employee shall choose, no later than
11 10 calendar days from the date of the employer's offer, whether to
12 accept a payment or decline a payment. If the employee agrees to
13 receive a payment, the employee shall choose a payment for the full
14 amount of unused earned sick leave or for 50 percent of the amount
15 of unused earned sick leave. The payment amount shall be based on
16 the same rate of pay that the employee earns at the time of the
17 payment. If the employee declines a payment for unused earned
18 sick leave, or agrees to a payment for 50 percent of the amount of
19 unused sick leave, the employee shall be entitled to carry forward
20 any unused or unpaid earned sick leave to the proceeding benefit
21 year as provided pursuant to subsection a. of section 2 of this act. If
22 the employee agrees to a payment for the full amount of unused
23 earned sick leave, the employee shall not be entitled to carry
24 forward any earned sick leave to the proceeding benefit year
25 pursuant to subsection a. of section 2 of this act.

26 d. If an employer foregoes the accrual process for earned sick
27 leave hours pursuant to subsection a. of section 2 of this act and
28 provides an employee with the full complement of earned sick leave
29 for a benefit year on the first day of each benefit year, then the
30 employer shall either provide to the employee a payment for the full
31 amount of unused earned sick leave in the final month of the
32 employer's benefit year or carry forward any unused sick leave to
33 the next benefit year. The employer may pay the employee the full
34 amount of unused earned sick leave in the final month of a benefit
35 year pursuant to this subsection only if the employer forgoes, with
36 respect to that employee, the accrual process for earned sick leave
37 during the next benefit year. Unless an employer policy or
38 collective bargaining agreement provides for the payment of
39 accrued earned sick leave upon termination, resignation, retirement
40 or other separation from employment, an employee shall not be
41 entitled under this section to payment of unused earned sick leave
42 upon the separation from employment.

43 e. Any information an employer possesses regarding the health
44 of an employee or any family member of the employee or domestic
45 or sexual violence affecting an employee or employee's family
46 member shall be treated as confidential and not disclosed except to

1 the affected employee or with the written permission of the affected
2 employee.

3 (cf: P.L.2018, c.10, s.3)

4

5 2. Section 3 of P.L.1989, c.261 (C.34:11B-3) is amended to
6 read as follows:

7 3. As used in this act:

8 a. "Child" means a biological, adopted, foster child, or resource
9 family child, stepchild, legal ward, or child of a parent, including a
10 child who becomes the child of a parent pursuant to a valid written
11 agreement between the parent and a gestational carrier.

12 b. "Director" means the Director of the Division on Civil
13 Rights.

14 c. "Division" means the Division on Civil Rights in the
15 Department of Law and Public Safety.

16 d. "Employ" means to suffer or permit to work for
17 compensation, and includes ongoing, contractual relationships in
18 which the employer retains substantial direct or indirect control
19 over the employee's employment opportunities or terms and
20 conditions of employment.

21 e. "Employee" means a person who is employed for at least 12
22 months by an employer, with respect to whom benefits are sought
23 under this act, for not less than 1,000 base hours during the
24 immediately preceding 12-month period. Any time, up to a
25 maximum of 90 calendar days, during which a person is laid off or
26 furloughed by an employer due to that employer curtailing
27 operations because of a state of emergency declared after October
28 22, 2012, shall be regarded as time in which the person is employed
29 for the purpose of determining eligibility for leave time under this
30 act. In making the determination, the base hours per week during
31 the layoff or furlough shall be deemed to be the same as the average
32 number of hours worked per week during the rest of the 12-month
33 period.

34 f. "Employer" means a person or corporation, partnership,
35 individual proprietorship, joint venture, firm or company or other
36 similar legal entity which engages the services of an employee and
37 which:

38 (1) (Deleted by amendment, P.L.2019, c.37);

39 (2) (Deleted by amendment, P.L.2019, c.37);

40 (3) With respect to the period of time from the 1,095th day
41 following the effective date of P.L.1989, c.261 (C.34:11B-1 et seq.)
42 through June 30, 2019, employs 50 or more employees for each
43 working day during each of 20 or more calendar workweeks in the
44 then current or immediately preceding calendar year; and

45 (4) With respect to any period of time on or after June 30, 2019,
46 employs 30 or more employees for each working day during each of
47 20 or more calendar workweeks in the then current or immediately
48 preceding calendar year.

1 "Employer" includes the State, any political subdivision thereof,
2 and all public offices, agencies, boards or bodies.

3 g. "Employment benefits" means all benefits and policies
4 provided or made available to employees by an employer, and
5 includes group life insurance, health insurance, disability insurance,
6 sick leave, annual leave, pensions, or other similar benefits.

7 h. "Parent" means a person who is the biological parent,
8 adoptive parent, foster parent, resource family parent, step-parent,
9 parent-in-law or legal guardian, having a "parent-child relationship"
10 with a child as defined by law, or having sole or joint legal or
11 physical custody, care, guardianship, or visitation with a child, or
12 who became the parent of the child pursuant to a valid written
13 agreement between the parent and a gestational carrier.

14 i. "Family leave" means leave from employment so that the
15 employee may provide care made necessary by reason of:

16 (1) the birth of a child of the employee, including a child born
17 pursuant to a valid written agreement between the employee and a
18 gestational carrier;

19 (2) the placement of a child into foster care with the employee
20 or in connection with adoption of such child by the employee; or

21 (3) the serious health condition of a family member of the
22 employee.

23 j. "Family member" means a child, parent, parent-in-law,
24 sibling, grandparent, grandchild, spouse, domestic partner, or one
25 partner in a civil union couple, or any other individual related by
26 blood to the employee, and any other individual that the employee
27 shows to have a close association with the employee which is the
28 equivalent of a family relationship.

29 k. "Reduced leave schedule" means leave scheduled for fewer
30 than an employee's usual number of hours worked per workweek
31 but not for fewer than an employee's usual number of hours worked
32 per workday, unless agreed to by the employee and the employer.

33 l. "Serious health condition" means an illness, injury,
34 impairment, or physical or mental condition which requires:

35 (1) inpatient care in a hospital, hospice, or residential medical
36 care facility; or

37 (2) continuing medical treatment or continuing supervision by a
38 health care provider.

39 During a state of emergency declared by the Governor, or when
40 indicated to be needed by the Commissioner of Health or other
41 public health authority, "serious health condition" shall also include
42 an illness caused by an epidemic of a communicable disease, a
43 known or suspected exposure to a communicable disease, or efforts
44 to prevent spread of a communicable disease, which requires in-
45 home care or treatment of a family member of the employee due to:

46 (1) the issuance by a healthcare provider or the commissioner or
47 other public health authority of a determination that the presence in

1 the community of a family member may jeopardize the health of
2 others; and

3 (2) the recommendation, direction, or order of the provider or
4 authority that the family member be isolated or quarantined because
5 of suspected exposure to the communicable disease.

6 m. "State of emergency" means a natural or man-made disaster
7 or emergency for which a state of emergency has been declared by
8 the President of the United States or the Governor, or for which a
9 state of emergency has been declared by a municipal emergency
10 management coordinator.

11 (cf: P.L.2019, c.37, s.1)

12

13 3. Section 4 of P.L.1989, c.261 (C.34:11B-4) is amended to
14 read as follows:

15 4. An employee of an employer in this State subject to the
16 provisions of this act shall be entitled to a family leave of 12 weeks
17 in any 24-month period upon advance notice to the employer in the
18 manner specified by the provisions of sections 11 and 12 of
19 P.L.2008, c.17 (C.43:21-39.2 and 43:21-39.3), unless the employer
20 denies family leave to the employee pursuant to subsection h. of
21 this section.

22 a. In the case of a family member who has a serious health
23 condition, the leave may be taken intermittently when medically
24 necessary, in the manner specified by the provisions of section 11
25 of P.L.2008, c.17 (C.43:21-39.2).

26 b. In the case of the foster care placement, birth or adoption of
27 a healthy child, the leave may be taken intermittently in the manner
28 specified by the provisions of paragraph (2) of subsection a. of
29 section 12 of P.L.2008, c.17 (C.43:21-39.3).

30 c. Leave taken because of the birth or placement for adoption
31 of a child may commence at any time within a year after the date of
32 the foster care placement, birth or placement for adoption.

33 d. Family leave required by this act may be paid, unpaid, or a
34 combination of paid and unpaid leave. If an employer provides paid
35 family leave for fewer than 12 workweeks, the additional weeks of
36 leave added to attain the 12-workweek total required by this act
37 may be unpaid.

38 e. An employer may require that any period of family leave be
39 supported by certification issued by a duly licensed health care
40 provider or any other health care provider determined by the
41 director to be capable of providing adequate certification.

42 (1) Where the certification is for the serious health condition of
43 a family member of the employee, the certification shall be
44 sufficient if it states: (a) the date on which the serious health
45 condition commenced; (b) the probable duration of the condition;
46 and (c) the medical facts within the provider's knowledge regarding
47 the condition;

1 (2) Where the certification is for the birth or placement of the
2 child, the certification need only state the date of birth or date of
3 placement, whichever is appropriate.

4 In any case in which the employer has reason to doubt the
5 validity of the certification provided pursuant to paragraph (1) of
6 this subsection, the employer may require, at its own expense, that
7 an employee obtain an opinion regarding the serious health
8 condition from a second health care provider designated or
9 approved, but not employed on a regular basis, by the employer. If
10 the second opinion differs from the certification provided pursuant
11 to paragraph (1) of this subsection, the employer may require, at its
12 own expense, that the employee obtain the opinion of a third health
13 care provider designated or approved jointly by the employer and
14 the employee concerning the serious health condition. The opinion
15 of the third health care provider shall be considered to be final and
16 shall be binding on the employer and the employee.

17 f. In any case in which the necessity for leave under this act is
18 foreseeable, based upon placement of a child into foster care an
19 expected birth or placement of the child for adoption, the employee
20 shall provide the employer with prior notice of the expected birth or
21 placement of the child for adoption or foster care in the manner
22 specified by the provisions of section 11 of P.L.2008, c.17
23 (C.43:21-39.2).

24 g. No employee shall, during any period of leave taken
25 pursuant to this section, perform services on a full-time basis for
26 any person for whom the employee did not provide those services
27 immediately prior to commencement of the leave.

28 h. An employer may deny family leave to the employee if:

29 (1) The employee is a salaried employee who is among the
30 highest paid 5% of the employer's employees or the seven highest
31 paid employees of the employer, whichever is greater;

32 (2) The denial is necessary to prevent substantial and grievous
33 economic injury to the employer's operations; and

34 (3) The employer notifies the employee of its intent to deny the
35 leave at the time the employer determines that the denial is
36 necessary.

37 The provisions of this subsection shall not apply when the family
38 leave is due to a health care provider, the Commissioner of Health
39 or other authorized public official having ordered, directed, or
40 recommended that a family member of the employee in need of care
41 by the employee be isolated or quarantined, or is due to a place of
42 care of a member of the employee's family being closed because of
43 a state of emergency declared by the Governor or order of the
44 Commissioner of Health or other authorized public official, during
45 an epidemic of a communicable disease, or a known or suspected
46 exposure to a communicable disease.

47 i. In any case in which the leave has already commenced at the
48 time of the notification pursuant to paragraph (3) of subsection h. of

1 this section, the employee shall return to work within 10 working
2 days of the date of notification.

3 (cf: P.L.2019, c.37, s.2)

4

5 4. Section 3 of P.L.1948, c.110 (C.43:21-27) is amended to
6 read as follows:

7 3. As used in this act, unless the context clearly requires
8 otherwise:

9 (a) (1) "Covered employer" means, with respect to whether an
10 employer is required to provide benefits during an employee's own
11 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
12 individual or type of organization, including any partnership,
13 association, trust, estate, joint-stock company, insurance company
14 or corporation, whether domestic or foreign, or the receiver, trustee
15 in bankruptcy, trustee or successor thereof, or the legal
16 representative of a deceased person, who is an employer subject to
17 the "unemployment compensation law" (R.S.43:21-1 et seq.),
18 except the State, its political subdivisions, and any instrumentality
19 of the State unless such governmental entity elects to become a
20 covered employer pursuant to paragraph (2) of this subsection (a);
21 provided, however, that commencing with the effective date of this
22 act, the State of New Jersey, including Rutgers, The State
23 University and the New Jersey Institute of Technology, shall be
24 deemed a covered employer, as defined herein.

25 "Covered employer" means, after June 30, 2009, with respect to
26 whether the employer is an employer whose employees are eligible
27 for benefits during periods of family temporary disability leave
28 pursuant to P.L.1948, c.110 (C.43:21-25 et al.), and, after December
29 31, 2008, whether employees of the employer are required to make
30 contributions pursuant to R.S.43:21-7(d)(1)(G)(ii), any individual
31 or type of organization, including any partnership, association,
32 trust, estate, joint-stock company, insurance company or domestic
33 or foreign corporation, or the receiver, trustee in bankruptcy, trustee
34 or successor thereof, or the legal representative of a deceased
35 person, who is an employer subject to the "unemployment
36 compensation law" (R.S.43:21-1 et seq.), including any
37 governmental entity or instrumentality which is an employer under
38 R.S.43:21-19(h)(5), notwithstanding that the governmental entity or
39 instrumentality has not elected to be a covered employer pursuant to
40 paragraph (2) of this subsection (a).

41 (2) Any governmental entity or instrumentality which is an
42 employer under R.S.43:21-19(h)(5) may, with respect to the
43 provision of benefits during an employee's own disability pursuant
44 to P.L.1948, c.110 (C.43:21-25 et al.), elect to become a "covered
45 employer" under this subsection beginning with the date on which
46 its coverage under R.S.43:21-19(h)(5) begins or as of January 1 of
47 any year thereafter by filing written notice of such election with the
48 division within at least 30 days of the effective date. Such election

1 shall remain in effect for at least two full calendar years and may be
2 terminated as of January 1 of any year thereafter by filing with the
3 division a written notice of termination at least 30 days prior to the
4 termination date.

5 (b) (1) "Covered individual" means, with respect to whether an
6 individual is eligible for benefits during an individual's own
7 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
8 person who is in employment, as defined in the "unemployment
9 compensation law" (R.S.43:21-1 et seq.), for which the individual is
10 entitled to remuneration from a covered employer, or who has been
11 out of such employment for less than two weeks, except that a
12 "covered individual" who is employed by the State of New Jersey,
13 including Rutgers, The State University or the New Jersey Institute
14 of Technology, or by any governmental entity or instrumentality
15 which elects to become a "covered employer" pursuant to P.L.1948.
16 c.110 (C.43:21-25 et al.) prior to July 1, 2019 shall not be eligible
17 to receive any benefits under the "Temporary Disability Benefits
18 Law" until such individual has exhausted all sick leave accumulated
19 as an employee in the classified service of the State or accumulated
20 under terms and conditions similar to classified employees or
21 accumulated under the terms and conditions pursuant to the laws of
22 this State or as the result of a negotiated contract with any
23 governmental entity or instrumentality which elects to become a
24 "covered employer"; and, after June 30, 2019 may be required, prior
25 to receiving any benefits under the "Temporary Disability Benefits
26 Law," to use up to two weeks of sick leave accumulated as an
27 employee in the classified service of the State or accumulated under
28 terms and conditions similar to classified employees or accumulated
29 under the terms and conditions pursuant to the laws of this State or
30 as the result of a negotiated contract with any governmental entity
31 or instrumentality which elects to become a "covered employer,"
32 except that the individual shall not be required to use the
33 individual's last week's worth of accumulated sick time before
34 receiving the benefits.

35 "Covered individual" shall not mean, with respect to whether an
36 individual is eligible for benefits during an individual's own
37 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
38 member of the Division of State Police in the Department of Law
39 and Public Safety.

40 (2) "Covered individual" means, with respect to whether an
41 individual is eligible for benefits during the individual's period of
42 family temporary disability leave pursuant to P.L.1948, c.110
43 (C.43:21-25 et al.), any individual who is in employment, as
44 defined in the "unemployment compensation law" (R.S.43:21-1 et
45 seq.), for which the individual is entitled to remuneration from a
46 covered employer, or who has been out of that employment for less
47 than two weeks.

1 (c) "Division" or "commission" means the Division of
2 Unemployment and Temporary Disability Insurance of the
3 Department of Labor and Workforce Development, and any
4 transaction or exercise of authority by the director of the division
5 shall be deemed to be performed by the division.

6 (d) "Day" shall mean a full calendar day beginning and ending
7 at midnight.

8 (e) "Disability" shall mean such disability as is compensable
9 under section 5 of P.L.1948, c.110 (C.43:21-29).

10 (f) "Disability benefits" shall mean any cash payments which
11 are payable to a covered individual for all or part of a period of
12 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.).

13 (g) "Period of disability" with respect to any covered individual
14 shall mean:

15 (1) The entire period of time during which the covered
16 individual is continuously and totally unable to perform the duties
17 of the covered individual's employment because of the covered
18 individual's own disability, except that two periods of disability due
19 to the same or related cause or condition and separated by a period
20 of not more than 14 days shall be considered as one continuous
21 period of disability; provided the individual has earned wages
22 during such 14-day period with the employer who was the
23 individual's last employer immediately preceding the first period of
24 disability; and

25 (2) On or after July 1, 2009, the entire period of family
26 temporary disability leave taken from employment by the covered
27 individual.

28 (h) "Wages" shall mean all compensation payable by covered
29 employers to covered individuals for personal services, including
30 commissions and bonuses and the cash value of all compensation
31 payable in any medium other than cash.

32 (i) (1) (Deleted by amendment, P.L.2001, c.17).

33 (2) (Deleted by amendment, P.L.2001, c.17).

34 (3) (Deleted by amendment, P.L.2013, c.221).

35 (4) "Base week" with respect to periods of disability
36 commencing on or after January 1, 2001, means any calendar week
37 of a covered individual's base year during which the covered
38 individual earned in employment from a covered employer
39 remuneration not less than an amount 20 times the minimum wage
40 in effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on
41 October 1 of the calendar year preceding the calendar year in which
42 the benefit year commences, which amount shall be adjusted to the
43 next higher multiple of \$1.00 if not already a multiple thereof,
44 except that if in any calendar week an individual subject to this
45 paragraph is in employment with more than one employer, the
46 covered individual may in that calendar week establish a base week
47 with respect to each of the employers from whom the covered

1 individual earns remuneration equal to not less than the amount
2 defined in this paragraph during that week.

3 (5) In the case of an individual who is laid off or furloughed by
4 an employer curtailing operations because of a state of emergency
5 declared after October 22, 2012, any week in which the individual
6 is separated from employment due to that layoff or furlough, up to a
7 maximum of 13 weeks, shall be regarded as a week which is a "base
8 week" for the purpose of determining whether the individual
9 becomes eligible for benefits pursuant to subsection (d) or (e) of
10 section 17 of P.L.1948, c.110 (C.43:21-41), but shall not be
11 regarded as a base week when calculating the "average weekly
12 wage" pursuant to subsection (j) of this section.

13 (j) (1) "Average weekly wage" means, with respect to the
14 payment of benefits commencing before the effective date of
15 P.L.2019, c.37 (C.43:21-45.2 et al.), the amount derived by dividing
16 a covered individual's total wages earned from the individual's most
17 recent covered employer during the base weeks in the eight calendar
18 weeks immediately preceding the calendar week in which a period
19 of disability commenced, by the number of such base weeks, and,
20 with respect to the payment of benefits commencing on or after the
21 effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), the amount
22 derived by dividing a covered individual's total wages earned from
23 the individual's most recent covered employer during the base
24 weeks in the base year immediately preceding the calendar week in
25 which a period of disability commenced, or in which the individual
26 submits a claim for the benefits pursuant to subsection h. of section
27 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection
28 (a) of section 25 of P.L.1948, c.110 (C.43:21-49), by the number of
29 base weeks.

30 (2) With respect to the payment of benefits commencing before
31 the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), if the
32 computation in paragraph (1) of this subsection (j) yields a result
33 which is less than the individual's average weekly earnings in
34 employment with all covered employers during the base weeks in
35 such eight calendar weeks, then the average weekly wage shall be
36 computed on the basis of earnings from all covered employers
37 during the base weeks in the eight calendar weeks immediately
38 preceding the week in which the period of disability commenced,
39 and, with respect to the payment of benefits commencing on or after
40 the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), if the
41 computation in paragraph (1) of this subsection (j) yields a result
42 which is less than the individual's average weekly earnings in
43 employment with all covered employers during the base weeks in
44 the base year, then the average weekly wage shall be computed on
45 the basis of earnings from all covered employers during the base
46 weeks in the base year immediately preceding the week in which
47 the period of disability commences, or in which the individual
48 submits a claim for the benefits pursuant to subsection h. of section

1 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection
2 (a) of section 25 of P.L.1948, c.110 (C.43:21-49).

3 (3) For periods of disability commencing on or after July 1,
4 2009 and before the effective date of P.L.2019, c.37 (C.43:21-45.2
5 et al.), if the computations in paragraphs (1) and (2) of this
6 subsection (j) both yield a result which is less than the individual's
7 average weekly earnings in employment with all covered employers
8 during the base weeks in the 26 calendar weeks immediately
9 preceding the week in which the period of disability commenced,
10 then the average weekly wage shall, upon a written request to the
11 department by the individual on a form provided by the department,
12 be computed by the department on the basis of earnings from all
13 covered employers of the individual during the base weeks in those
14 26 calendar weeks, and, in the case of a claim for benefits from a
15 private plan, that computation of the average weekly wage shall be
16 provided by the department to the individual and the individual's
17 employer.

18 When determining the "average weekly wage" with respect to a
19 period of family temporary disability leave for an individual who
20 has a period of family temporary disability immediately after the
21 individual has a period of disability for the individual's own
22 disability, the period of disability is deemed to have commenced at
23 the beginning of the period of disability for the individual's own
24 disability, not the period of family temporary disability.

25 (k) "Child" means a biological, adopted, or foster child,
26 stepchild or legal ward of a covered individual, child of a domestic
27 partner of the covered individual, or child of a civil union partner of
28 the covered individual, including a child who becomes the child of
29 a parent pursuant to a valid written agreement between the parent
30 and a gestational carrier.

31 (l) "Domestic partner" means a domestic partner as defined in
32 section 3 of P.L.2003, c.246 (C.26:8A-3).

33 (m) "Civil union" means a civil union as defined in section 2 of
34 P.L.2006, c.103 (C.37:1-29).

35 (n) "Family member" means a sibling, grandparent, grandchild,
36 child, spouse, domestic partner, civil union partner, parent-in-law,
37 or parent of a covered individual, or any other individual related by
38 blood to the employee, and any other individual that the employee
39 shows to have a close association with the employee which is the
40 equivalent of a family relationship.

41 (o) "Family temporary disability leave" means leave taken by a
42 covered individual from work with an employer to:

43 (1) participate in the providing of care, as defined in the "Family
44 Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) and regulations
45 adopted pursuant to that act, for a family member of the individual
46 made necessary by a serious health condition of the family member;

47 (2) be with a child during the first 12 months after the child's
48 birth, if the individual, or the domestic partner or civil union partner

1 of the individual, is a biological parent of the child, or is a parent of
2 the child pursuant to a valid gestational carrier agreement, or the
3 first 12 months after the placement of the child for adoption or as a
4 foster child with the individual; or

5 (3) engage in activities for which unpaid leave may be taken
6 pursuant to section 3 of the "New Jersey Security and Financial
7 Empowerment Act," P.L.2013, c.82 (C.34:11C-3), on the
8 individual's own behalf, if the individual is a victim of an incident
9 of domestic violence, a sexually violent offense, or to assist a
10 family member of the individual who has been a victim of an
11 incident of domestic violence, or a sexually violent offense,
12 provided that any time taken by an individual who has been a victim
13 of an incident of domestic violence, or a sexually violent offense for
14 which the individual receives benefits for a disability caused by the
15 violence or offense shall be regarded as a period of disability of the
16 individual and not as a period of family temporary disability leave.

17 "Family temporary disability leave" does not include any period
18 of time in which a covered individual is paid benefits pursuant to
19 P.L.1948, c.110 (C.43:21-25 et al.) because the individual is unable
20 to perform the duties of the individual's employment due to the
21 individual's own disability.

22 (p) "Health care provider" means a health care provider as
23 defined in the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et
24 seq.), and any regulations adopted pursuant to that act.

25 (q) "Parent of a covered individual" means a biological parent,
26 foster parent, adoptive parent, or stepparent of the covered
27 individual or a person who was a legal guardian of the covered
28 individual when the covered individual was a child, or who became
29 the parent of the covered individual pursuant to a valid written
30 agreement between the parent and a gestational carrier.

31 (r) "Placement for adoption" means the time when a covered
32 individual adopts a child or becomes responsible for a child pending
33 adoption by the covered individual.

34 (s) "Serious health condition" means an illness, injury,
35 impairment or physical or mental condition which requires:
36 inpatient care in a hospital, hospice, or residential medical care
37 facility; or continuing medical treatment or continuing supervision
38 by a health care provider. During a state of emergency declared by
39 the Governor, or when indicated to be needed by the Commissioner
40 of Health or other public health authority, "serious health
41 condition" shall also include an illness caused by an epidemic of a
42 communicable disease, a known or suspected exposure to a
43 communicable disease, or efforts to prevent spread of a
44 communicable disease, which requires in-home care or treatment of
45 the employee or family member of the employee due to:

46 (1) the issuance by a healthcare provider or the commissioner or
47 other public health authority of a determination that the presence in

1 the community of the employee or family member may jeopardize
2 the health of others; and

3 (2) the recommendation, direction, or order of the provider or
4 authority that the employee or family member be isolated or
5 quarantined as a result of suspected exposure to a communicable
6 disease.

7 (t) "12-month period" means, with respect to an individual who
8 establishes a valid claim for disability benefits during a period of
9 family temporary disability leave, the 365 consecutive days that
10 begin with the first day that the individual first establishes the
11 claim.

12 (u) "State of emergency" means a natural or man-made disaster
13 or emergency for which a state of emergency has been declared by
14 the President of the United States or the Governor, or for which a
15 state of emergency has been declared by a municipal emergency
16 management coordinator.

17 (v) "Base year" with respect to benefit years commencing on or
18 after the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.),
19 means the first four of the last five completed calendar quarters
20 immediately preceding the period of disability, except that, if the
21 individual does not have sufficient qualifying weeks or wages in the
22 individual's base year to qualify for benefits, the individual shall
23 have the option of designating that the individual's base year shall
24 be the "alternative base year," which means the last four completed
25 calendar quarters immediately preceding the period of disability;
26 and except that if the individual also does not have sufficient
27 qualifying weeks or wages in the last four completed calendar
28 quarters immediately preceding the period of disability, "alternative
29 base year" means the last three completed calendar quarters
30 immediately preceding the individual's benefit year and, of the
31 calendar quarter in which the period of disability commences, the
32 portion of the quarter which occurs before the commencing of the
33 period of disability. The division shall inform the individual of the
34 individual's options under this subsection. If information regarding
35 weeks and wages for the calendar quarter or quarters immediately
36 preceding the period of disability is not available to the division
37 from the regular quarterly reports of wage information and the
38 division is not able to obtain the information using other means
39 pursuant to State or federal law, the division may base the
40 determination of eligibility for benefits on the affidavit of an
41 individual with respect to weeks and wages for that calendar
42 quarter. The individual shall furnish payroll documentation, if
43 available, in support of the affidavit. A determination of benefits
44 based on an alternative base year shall be adjusted when the
45 quarterly report of wage information from the employer is received
46 if that information causes a change in the determination.

47 (cf: P.L.2019, c.37, s.8)

1 5. Section 5 of P.L.1948, c.110 (C.43:21-29) is amended to
2 read as follows:

3 5. Compensable disability.

4 (a) In the case of the disability of a covered individual,
5 disability shall be compensable subject to the limitations of
6 P.L.1948, c.110 (C.43:21-25 et al.) if: the disability is the result of
7 the covered individual suffering an accident or sickness not arising
8 out of and in the course of the individual's employment or if so
9 arising not compensable under the workers' compensation law,
10 R.S.34:15-1 et seq., including if the disability is the result of the
11 donation of any organ or bone marrow by the covered individual,
12 and the disability results in the individual's total inability to perform
13 the duties of employment, except that an individual who is
14 otherwise eligible for benefits but only able to return to work on a
15 reduced basis while recovering from the disability may receive
16 benefits pursuant to the provisions of subsection (b) of section 16 of
17 P.L.1948, c.110 (C.43:21-40).

18 (b) In the case of an individual taking family temporary
19 disability leave, the leave, including leave to care for family
20 members suffering from accident or sickness, shall be compensable
21 subject to the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.).

22 (c) During a state of emergency declared by the Governor, or
23 when indicated to be needed by the Commissioner of Health or
24 other public health authority, "sickness" also includes an illness
25 caused by an epidemic of a communicable disease, a known or
26 suspected exposure to a communicable disease, or efforts to prevent
27 spread of a communicable disease, which requires in-home care or
28 treatment of the employee or family member of the employee due
29 to:

30 (1) the issuance by a healthcare provider or the commissioner or
31 other public health authority of a determination that the presence in
32 the community of the family member or employee may jeopardize
33 the health of others; and

34 (2) the recommendation, direction, or order of the provider or
35 authority that the employee or family member be isolated or
36 quarantined as a result of suspected exposure to a communicable
37 disease.

38 (cf: P.L.2019, c.464, s.1)

39

40 6. Section 14 of P.L.1948, c.110 (C.43:21-38) is amended to
41 read as follows:

42 14. a. With respect to any period of disability for an individual's
43 own disability commencing on or after January 1, 1953, disability
44 benefits, not in excess of an individual's maximum benefits, shall be
45 payable with respect to disability which commences while a person
46 is a covered individual under the Temporary Disability Benefits
47 Law, and shall be payable with respect to the eighth consecutive
48 day of such disability and each day thereafter that such period of

1 disability continues; and if benefits shall be payable for three
2 consecutive weeks with respect to any period of disability
3 commencing on or after January 1, 1968, then benefits shall also be
4 payable with respect to the first seven days thereof. With respect to
5 any period of disability for an individual's own disability
6 commencing on or after the effective date of P.L. , c. (pending
7 before the Legislature as this bill) the disability benefits shall be
8 payable with respect to the first day of the disability, if the
9 disability is for a sickness as described in subsection (c) of section 5
10 of P.L.1948, c.110 (C.43:21-29).

11 b. With respect to any period of family temporary disability
12 leave commencing on or after July 1, 2009 and while an individual
13 is a covered individual, family temporary disability benefits, not in
14 excess of the individual's maximum benefits, shall be payable with
15 respect to the first day of leave taken after the first one-week period
16 following the commencement of the period of family temporary
17 disability leave and each subsequent day of leave during that period
18 of family temporary disability leave; and if benefits become payable
19 on any day after the first three weeks in which leave is taken, then
20 benefits shall also be payable with respect to any leave taken during
21 the first one-week period in which leave is taken. With respect to
22 any period of family temporary disability leave commencing on or
23 after July 1, 2019 and while an individual is a covered individual,
24 family temporary disability benefits, not in excess of the
25 individual's maximum benefits, shall be payable with respect to the
26 first day of leave taken upon the commencement of the period of
27 family temporary disability leave and each subsequent day of leave
28 during that period of family temporary disability leave. The
29 maximum total benefits payable to any eligible individual for any
30 period of disability of the individual commencing on or after
31 January 1, 1968, shall be either 26 times his weekly benefit amount
32 or 1/3 of his total wages in his base year, whichever is the lesser;
33 provided that such maximum amount shall be computed in the next
34 lower multiple of \$1.00 if not already a multiple thereof. The
35 maximum total benefits payable to any eligible individual for any
36 period of family temporary disability leave commencing on or after
37 July 1, 2009 and before July 1, 2020, shall be six times the
38 individual's weekly benefit amount or 1/3 of his total wages in his
39 base year, whichever is the lesser; provided that the maximum
40 amount shall be computed in the next lower multiple of \$1.00, if not
41 already a multiple thereof. The maximum total benefits payable to
42 any eligible individual for any period of family temporary disability
43 leave commencing on or after July 1, 2020, shall be twelve times
44 the individual's weekly benefit amount; provided that the maximum
45 amount shall be computed in the next lower multiple of \$1.00, if not
46 already a multiple thereof.
47 (cf: P.L.2019, c.37, s.11)

1 7. Section 15 of P.L.1948, c.110 (C.43:21-39) is amended to
2 read as follows:

3 15. Limitation of benefits. Notwithstanding any other provision
4 of the "Temporary Disability Benefits Law," P.L.1948, c.110
5 (C.43:21-25 et al.), no benefits shall be payable under the State plan
6 to any individual:

7 (a) for the first seven consecutive days of each period of
8 disability; except that:

9 (1) if benefits shall be payable for three consecutive weeks with
10 respect to any period of disability, then benefits shall also be
11 payable with respect to the first seven days thereof;

12 (2) (Deleted by amendment, P.L.2019, c.37)

13 (3) in the case of an individual taking family temporary
14 disability leave, there shall be no waiting period; **[and]**

15 (4) if the benefits shall be payable for a period of disability
16 which is the result of the donation of any organ or bone marrow by
17 the covered individual, then benefits shall be payable with respect
18 to the first seven days thereof; and

19 (5) the seven-day waiting period shall not apply to benefits for a
20 period of disability if the disability is for a sickness as described in
21 subsection (c) of section 5 of P.L.1948, c.110 (C.43:21-29);

22 (b) (1) for more than 26 weeks with respect to any one period of
23 disability of the individual;

24 (2) for more than six weeks with respect to any one period of
25 family temporary disability leave commencing before July 1, 2020
26 and more than 12 weeks if the period of leave commences on or
27 after July 1, 2020, or for more than 42 days with respect to any one
28 period of family temporary disability leave commencing before July
29 1, 2020 and more than 56 days if the period of leave commences on
30 or after July 1, 2020, and is taken on an intermittent basis; and

31 (3) for more than six weeks of family temporary disability leave
32 during any 12-month period commencing before July 1, 2020 and
33 more than 12 weeks for any 12-month period commencing on or
34 after July 1, 2020, or for more than 42 days of family temporary
35 disability leave taken during any 12-month period commencing
36 before July 1, 2020 and more than 56 days if the period of leave
37 commences on or after July 1, 2020, on an intermittent basis,
38 including family temporary disability leave taken pursuant to
39 R.S.43:21-4(f)(2) while unemployed;

40 (c) for any period of disability which did not commence while
41 the claimant was a covered individual;

42 (d) for any period of disability of a claimant during which the
43 claimant is not under the care of a legally licensed physician,
44 dentist, optometrist, podiatrist, practicing psychologist, advanced
45 practice nurse, certified nurse midwife, or chiropractor, who, when
46 requested by the division, shall certify within the scope of the
47 practitioner's practice, the disability of the claimant, the probable
48 duration thereof, and, where applicable, the medical facts within the

1 practitioner's knowledge or for any period of family temporary
2 disability leave for a serious health condition of a family member of
3 the claimant, during which the family member is not receiving
4 inpatient care in a hospital, hospice, or residential medical care
5 facility or is not subject to continuing medical treatment or
6 continuing supervision by a health care provider, who, when
7 requested by the division, shall certify within the scope of the
8 provider's practice, the serious health condition of the family
9 member, the probable duration thereof, and, where applicable, the
10 medical facts within the provider's knowledge;

11 (e) (Deleted by amendment, P.L.1980, c.90.)

12 (f) for any period of disability due to willfully and intentionally
13 self-inflicted injury, or to injury sustained in the perpetration by the
14 claimant of a crime of the first, second, third, or fourth degree, or
15 for any period during which a covered individual would be
16 disqualified for unemployment compensation benefits for gross
17 misconduct under subsection (b) of R.S.43:21-5;

18 (g) for any period during which the claimant performs any work
19 for remuneration or profit, except that, in a case of a claim for
20 benefits for a period of family temporary disability on or after July
21 1, 2020 in which the covered individual has more than one
22 employer, the individual shall have the option of claiming benefits
23 for leave taken from one employer, based on wages paid by that
24 employer, on the condition that the individual does not, during the
25 period for which the benefits are paid, increase the amount of
26 employment time with any one employer;

27 (h) in a weekly amount which together with any remuneration
28 the claimant continues to receive from the employer would exceed
29 regular weekly wages immediately prior to disability;

30 (i) for any period during which a covered individual would be
31 disqualified for unemployment compensation benefits under
32 subsection (d) of R.S.43:21-5, unless the disability commenced
33 prior to such disqualification;

34 (j) for any period during which the claimant receives any paid
35 sick leave, vacation time or other leave at full pay from the
36 employer of the individual;

37 and there shall be no other cause of disqualification or ineligibility
38 to receive disability benefits hereunder except as may be
39 specifically provided in P.L.1948, c.110 (C.43:21-25 et al.).

40 (cf: P.L.2019, c.464, s.2)

41

42 8. This act shall take effect immediately.

43

44

STATEMENT

45

46 This bill is designed to assure that workers impacted by
47 epidemics of communicable diseases have access to leave needed to
48 care for themselves or for effected members of their families.

1 The bill expands the scope of the State's temporary disability
2 insurance (TDI) law, P.L.1948, c.110 (C.43:21-25 et al), so that
3 workers may obtain TDI or family leave insurance (FLI) benefits by
4 expanding that law's definition of a "serious health condition" for
5 which a worker may obtain the benefits, either for the worker's own
6 condition in the case of TDI benefits, or for the condition of a
7 family member of the worker cared for by the worker in the case of
8 FLI benefits. The bill states that during a state of emergency
9 declared by the Governor, or, as found to be needed by the
10 Commissioner of Health or other public health authority, a "serious
11 health condition" includes an illness caused by an epidemic of a
12 communicable disease, a known or suspected exposure to a
13 communicable disease, or efforts to prevent spread of a
14 communicable disease, which:

15 1. in the case of FLI benefits, prompts the issuance by a public
16 health authority of a determination that the presence in the
17 community of the worker's family member in need of care by the
18 worker, would jeopardize the health of others; or

19 2. in the case of FLI or TDI benefits, results in the
20 recommendation of a healthcare provider or public health authority
21 that a worker, or a family member of the worker in need of care by
22 the worker, voluntarily undergo self-isolation or self-quarantine as a
23 result of suspected exposure to a communicable disease because the
24 presence in the community of that worker or family member would
25 jeopardize the health of others.

26 The bill also eliminates the current one-week waiting period for
27 disability benefits in the indicated epidemic-related cases.

28 The bill modifies the "Family Leave Act," P.L.1989, c.261
29 (C.34:11B-1 et seq.) so that the rights to reinstatement to
30 employment provided to workers by that act are applied to the
31 epidemic-related cases indicated in the bill, and modifies P.L.2018,
32 c.10 (C.34:11D-1) so that the earned sick leave provided by that law
33 is provided in all of the epidemic-related cases indicated in the bill.